



STATE OF INDIANA

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March 7, 2012

Gary F. Otto
DOC 905901
5124 W. Reformatory Road
Pendleton, Indiana 46064

Re: Formal Complaint 12-FC-34; Alleged Violation of the Access to Public Records Act by the Correctional Industrial Facility

Dear Mr. Otto:

This advisory opinion is in response to your formal complaint alleging the Correctional Industrial Facility ("CIF") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Superintendent Wendy Knight responded on behalf of the CIF. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a request to the CIF for the following records:

1. Your updated Re-Entry Accountability Plan ("RAP");
2. Copy of the conduct report that provides you were written up for a recent assault;
3. Copy of the records that Wendy Knight, CIF Superintendent, based her statements on when addressing why you failed to meet the I.R.E.F. program criteria;
4. Your updated Offender Classification Detail Records;
5. Explanation on how you were unable to meet the I.R.E.F. program criteria.

You further allege that on January 17, 2012, Superintendent Knight denied your request when she informed you that you have to receive the records from your counselor. You provide that Superintendent Knight is aware of your prior grievances that have been filed and your fear of reprisal by your counselor should you request records from him.

In response to your formal complaint, Superintendent Knight advised that you have been continually been informed that request for the documents you seek should be addressed to your Unit Team Staff. Criteria for the programs are available at the CIF

Law Library. All classification information, including your conduct history, offender classification detail report, and RAP all are available from your case manager or Unit Team Staff. In order to receive the records that you are seeking, you need to follow the CIF protocol, which all other offenders are required to follow.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *See* I.C. § 5-14-3-1. The CIF is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the CIF’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the CIF responded to your request within the timelines provided by section 9 of the APRA.

As outlined in your previous formal complaints that have been filed, one exception to disclosure under the APRA is for records that are "declared confidential by rule adopted by a public agency under" specific statutory authority to do so. *See* I.C. §5-14-3-4(a)(2); *See Opinion of the Public Access Counselor 11-FC-194 and 247*. The DOC has authority under I. C. § 11-8-5-2(a) to promulgate administrative rules to "classify as confidential . . . personal information maintained on a person who has been committed to the department or who has received correctional services from the department." I.C. § 11-8-5-2(b) provides that the Department may keep confidential information from the offender or other persons unless ordered to disclose (e.g. court order, for research purposes, employees of the DOC if required to perform their duties, etc.).

The Department has classified certain offender records as confidential pursuant to 210 IAC 1-6-2, which provides that an offender, or his agent's, rights to access confidential or restricted information are set forth at 210 IAC 1-6-4. DOC Policy 01-04-104, which further addresses access to offender records, is based upon the Department's administrative rules. *See Opinion of the Public Access Counselor 02-FC-46*. Pursuant to 01-04-104, offenders may request to review their records on an annual basis and that the request may be denied if not submitted in accordance with the Department of Corrections



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operational procedures. *See Opinion of the Public Access Counselor 11-FC-256.* You have been informed by Superintendent Knight and other CIF employees that the proper avenue to request your offender records is through your case manager or Unit Staff Team. *See Opinion of the Public Access Counselor 11-FC-194.* Upon receipt of your request, the Unit Staff Team or case manager would be required to respond to your request for offender records. As such, it is my opinion that the CIF did not violate the APRA as you submitted your request contrary to the requirements of DOC Policy 01-04-104, which all offenders are required to follow.

CONCLUSION

For the foregoing reasons, it is my opinion that the CIF did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage", written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Superintendent Wendy Knight